

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

NAACP OF SAN JOSE/ SILICON
VALLEY, et al.,

Plaintiffs,

v.

CITY OF SAN JOSE, et al.,

Defendants.

Case No. 21-cv-01705-PJH

**ORDER DENYING MOTION FOR
LEAVE TO FILE MOTION FOR
RECONSIDERATION**

Re: Dkt. No. 153

Plaintiffs in the above-captioned case have filed a motion for leave to file a motion for reconsideration of the court's summary judgment order; specifically, the portion of the order dismissing the claims of the organizational plaintiffs. Plaintiffs argue that the parties did not have an opportunity to brief the issue of organizational standing, and they bring their motion based on Civil Local Rule 7-9(b)(1), that a material difference in fact or law exists from that which was presented to the court before entry of the order for which reconsideration is sought. See Dkt. 153.

Plaintiffs argue that "defendants did not move to dismiss the organization plaintiffs." See Dkt. 153 at 2. However, the face of defendants' motion makes clear that "all defendants will and hereby do move pursuant to Federal Rule of Civil Procedure 56 for summary judgment on all claims brought by all plaintiffs." See Dkt. 121 at 1 (emphasis added). While plaintiffs are correct that defendants' arguments regarding the organizational plaintiffs' claims were made in a footnote, the fact remains that plaintiffs' opposition brief did not address the organizations' claims at all (even in a corresponding footnote), nor did plaintiffs request additional pages to brief the issue. The Ninth Circuit

has held that arguments not raised in “opposition to summary judgment” are “waived.”
See, e.g., Loomis v. Cornish, 836 F.3d 991, 997 (9th Cir. 2016) (citing Alaska Airlines, Inc. v. United Airlines, Inc., 948 F.2d 536, 546 n.15 (9th Cir. 1991)). Accordingly,
plaintiffs’ motion for leave to file a motion for reconsideration is DENIED.

IT IS SO ORDERED.

Dated: August 18, 2023

/s/ Phyllis J. Hamilton

PHYLLIS J. HAMILTON
United States District Judge

United States District Court
Northern District of California